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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,849	10/07/2003	Annette Beaulieu	FR920020070US1	5822
23550 7590 01/28/2008 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER ANWARI, MACEEH	
			ART UNIT 2144	PAPER NUMBER
			NOTIFICATION DATE 01/28/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hwdpatents.com

MN

Office Action Summary	Application No.	Applicant(s)	
	10/680,849	BEAULIEU ET AL.	
	Examiner	Art Unit	
	Maceeh Anwari	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendments filed on 11/15/2007. **Claims 8-9** have been amended. No other claims have been amended, canceled, or newly presented. Accordingly, **claims 1-9** are pending.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8- 9 are rejected under 35 U.S.C. 101 because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "non-functional descriptive material." Both types of "descriptive material" are non-statutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive

material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming non-functional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9 rejected under 35 U.S.C. 102(b) as being anticipated by Skemer (hereinafter Skemer) U.S. Publication NO.: 2001/0044893 A1.

Brown teaches claims:

1. A method executed by an agent on a computing system, providing robustness to an accounting function of user sessions established by at least one NAS in an IP network (Figure 3-4 and Abstract; reads on this limitation by talking about network access servers), the accounting function being performed on a RADIUS

server storing an ID, IP address and secret code for each of the at least one NAS and information identifying each established session (Figure 5-6 and Abstract & Par. 25; reads on this limitation by making mention of RADIUS servers and authentication), said method comprising the steps of: identifying for the RADIUS server, the agent as a RADIUS client of the RADIUS server (Figure 5-6 and Abstract & Par. 25 & 38; reads on this limitation by making mention of RADIUS servers and authentication), polling from the agent the at least one NAS and (Figure 3-4 and Abstract & Par. 56; reads on this limitation by making mention of periodic polls), if no answer is received from at least one non-responding NAS, sending from the agent a RADIUS stop accounting request to the RADIUS server for all sessions established by the at least one non-responding NAS (Figure 1-6 and Abstract & Par. 21 & 24 & 38 & 42; time sessions, accounting data, accounting statistics and accounting purposes).

2. The method of claim 1, wherein the identifying step comprises the step of storing the ID, the IP address and the secret code of the agent ((Figure 5-6 and Abstract & Par. 25; reads on this limitation by making mention of RADIUS servers and authentication).

3. The method of claim 1, wherein the polling step comprises the step of waiting for an expiration of a timer which is a first parameter defined during an installation of the agent (Figure 1-6 and Abstract & Par. 38 & 42; reads on this limitation by making mention of time sessions).

4. The method of claim 1, wherein the polling step is repeated n times, n being an integer defined at an installation of the agent (Figure 3-4 and Abstract & Par. 56; reads on this limitation by making mention of periodic polls).
5. The method of claim 1, wherein the polling step and the sending step further comprise a step of reading a table owned by the RADIUS server containing one entry per established session and, for each entry, information to identify the NAS and prepare parameters for the RADIUS stop accounting request (Figure 3-6 and Abstract & Par. 56 & 38 & 42; reads on this limitation by making mention of periodic polls, authentication, timed sessions and storing of information).
6. The method of claim 5, wherein the sending step comprises a preliminary step, after reading the established session table, of, including as parameters of the RADIUS stop accounting request: accounting status, accounting session time, a NAS identifier; a session identifier and an authenticator (Figure 3-6 and Abstract & Par. 56 & 38 & 42; reads on this limitation by making mention of periodic polls, authentication, timed sessions and storing of information).
7. The method of claim 6 further comprising the steps of: computing the accounting session time by subtracting the session start time read in the established session table from a current computing system timestamp (Figure 5-6 and Par. 38 & 42 & 50; reads on this limitation by reciting timed sessions, and time stamping); and, computing the authenticator as a function of the secret code read with the ID and the IP address stored for the corresponding NAS (Figure 5-6

and Abstract & Par. 25 & 38; reads on this limitation by making mention of RADIUS servers and authentication).

8. A computer program product comprising programming code instructions for executing the steps of the method according to of claim 1 when said program is executed on a computing system (See rejection scope of claim 1).

9. A computing system comprising means adapted for carrying out the method according to of claim 1 (See rejection scope of claim 1).

Examiner Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Response to Arguments

3. Applicant's arguments filed 11/02/2007 have been fully considered but they are not persuasive. In substance, applicant argues: A) Applicant argues that the amendments to claims 8-9 overcome the rejection under 35 U.S.C 101; B) that Skemer fails to disclose that the polling is used to poll at least one NAS in order to determine if any of the NASs is not responding.

4. In response to A), examiner respectfully disagrees; because the claims still lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. The only structure given to the computer program product is programming code which is still software per se. For further clarification refer to rejection above.

5. In response to B), examiner once again respectfully disagrees. Skemer discloses in numerous instances of polling and gathering of statistical data of accounting for billing purposes (Par. 21 & 24 & 36 & 38 & 42). Therefore, it would be inherent that Skemer's polling and accounting would stop accounting data collection for connections that are down.
6. Applicant has had an opportunity to amend the claimed subject matter, and has failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the present and previous Office action rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP 2111.
7. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).
8. Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends

broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly defines the claimed invention.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maceeh Anwari whose telephone number is 571-272-7591. The examiner can normally be reached on Monday-Friday 7:30-5:00 PM ES.

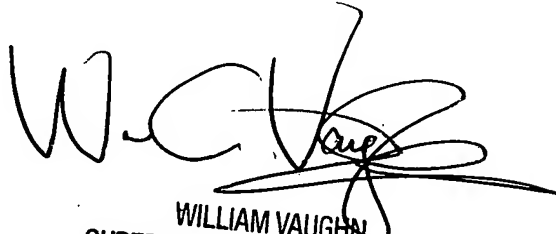
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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